# Chapter 3: Section 625 Offenses

CHAPTER
3



This chapter outlines the various criminal offenses listed in §625 of the Vehicle Code, as well as the related offense of refusing to submit to a preliminary chemical breath analysis. The criminal penalties, licensing sanctions, and vehicle sanctions consequent to each offense are also discussed as those penalties or sanctions apply to both first-time and repeat offenders. A series of charts summarizing the information presented in this chapter appears at the end of the chapter in the Appendix.

> **Note:** For purposes of assessing points, taking licensing or registration actions, or imposing criminal penalties and other sanctions, a conviction for an attempted violation of the Vehicle Code, or an attempted violation of a substantially corresponding local ordinance or law of another state, is treated as if it were a conviction for a completed offense. MCL 257.204b.

Due to changes in the law, the acronyms for drunk driving offenses have changed. Previously, operating while visibly impaired was referred to as OWI. The new acronym for operating while visibly impaired is OWVI. Previously, operating while under the influence of intoxicating liquor, operating with an unlawful blood alcohol content, and operating under the influence of a controlled substance were referred to as OUIL, UBAC, and OUID respectively. The new acronym for all three of these offenses is OWI.

# 3.1 Operating While Impaired (OWI) — §625(1)

## A. Statute

MCL 257.625(1) states:

> "A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person is operating while intoxicated. As used in this section, 'operating while intoxicated' means either of the following applies:
>
> > "(a) The person is under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.
> >
> > "(b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or, beginning October 1, 2013, the person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine."

**Note:** The following criminal jury instructions may be used in cases involving this offense:

CJI2d 15.1 Operating While Intoxicated – OWI

CJI2d 15.2 Elements Common to OWI and OWVI

CJI2d 15.3 Specific Elements of OWI

CJI2d 15.4 Specific Elements of OWVI

CJI2d 15.5 Factors in Considering OWI and OWVI

CJI2d 15.6 Possible Verdicts

CJI2d 15.7 Verdict Form

CJI2d 15.9 Defendant's Decision to Forgo Chemical Testing

## B. Elements of OWI Under §625(1)(a)

The elements of this offense are set forth in MCL 257.625(1)(a) as follows:

**1. Defendant operated a motor vehicle on a Michigan highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for parking,***

*See Section 1.3 of this volume for definition of the terms "operating" and "generally accessible to motor vehicles" as used in the statute.

> It is not necessary for a defendant to possess a driver's license in order to be convicted of OWI. MCL 257.625(1).

**AND**

**2. At the time defendant operated the motor vehicle, defendant was under the influence of alcoholic liquor, a controlled substance,* or a combination of alcoholic liquor and a controlled substance,**

*For a definition of "controlled substance," see Section 1.3(A) of this volume.

Persons charged with, and convicted of, operating a motor vehicle under the influence of a controlled substance are treated and sentenced the same as persons who are charged with operating a motor vehicle under the influence of alcohol. MCL 257.625(1)(a).* In *People v Prehn,* 153 Mich App 532 (1986), the Court of Appeals addressed a situation where a defendant had ingested a combination of alcohol and a prescription drug. The information filed in *Prehn* stated only that the defendant had driven under the influence of alcohol; however, the trial court gave the following instruction in response to a question from the jury about the interaction of the drug with alcohol:

*But see Section 2.7(B) of this volume on special findings and reporting requirements in cases where the defendant was under the influence of a controlled substance.

> "The defendant . . . can only be convicted of [OWI] if it is proved beyond a reasonable doubt that he was under the influence of intoxicating liquor at the time he was operating a motor vehicle. He is not charged with driving while under the influence of prescription drugs . . . and . . . cannot be convicted if he was intoxicated, and his intoxication was solely caused by his consumption of drugs or medication.
>
> "If, however, it is proven beyond a reasonable doubt that the defendant was intoxicated while driving the motor vehicle . . . and that such intoxication was due to the combined effect of prescription drugs . . . then the defendant may be convicted of driving under the influence of intoxicating liquor, even though the amount of intoxicating liquor consumed would not alone, absent the effect of the prescription drugs . . . have rendered him intoxicated to the extent described in the [previous] jury instructions I have given you defining this offense." 153 Mich App at 533–534.

The Court of Appeals disagreed with the defendant's assertion on appeal that the foregoing instruction amounted to an amendment of the information to include a new offense (i.e., OUID). The panel found that the jury could properly consider the effect of the prescription drug on the defendant's susceptibility to alcohol, just as it could consider the defendant's weight in determining whether the amount of alcohol he had consumed was sufficient to render him intoxicated. "The [trial court's] instruction merely clarified for the jury one of the factors which might be of relevance in determining defendant's guilt of the charged offense." 153 Mich App at 535.

"Under the influence" is defined in CJI2d 15.3(2) as follows:

> "'Under the influence of alcohol' means that because of drinking alcohol, the defendant's ability to operate a motor vehicle in a normal manner was substantially lessened. To be under the influence, a person does not have to be what is called 'dead drunk,' that is, falling down or hardly able to stand up. On the other hand, just because a person has drunk alcohol or smells of alcohol does not prove, by itself, that the person is under the influence of alcohol. The test is whether, because of drinking alcohol, the defendant's mental or physical condition was significantly affected and the defendant was no longer able to operate a vehicle in a normal manner."

**AND**

**3. As a result, defendant was substantially deprived of normal control or clarity of mind,**

> This element was set forth by the Court of Appeals in *People v Raisanen*, 114 Mich App 840, 844 (1982).

**AND**

**4. Defendant was no longer able to operate a vehicle in a normal manner.**

> In *People v Walters*, 160 Mich App 396, 403 (1987), the defendant Walters was charged with OWI and convicted by a jury of the lesser-included offense of driving while impaired. A police officer testified that he saw Walters drive about 30 feet along the road, stop, and back into a driveway. The officer said he did not notice anything abnormal about Walters's driving; however, Walters smelled of alcohol, his eyes were glazed and bloodshot, and he swayed slightly on his feet. On appeal from his conviction, Walters asserted that he could not be convicted of OWI or driving while impaired when the officer saw him driving normally. The Court of Appeals affirmed the conviction, holding that the circumstantial evidence presented was sufficient to establish that Walters was unable to drive normally. In so holding, the panel

noted that "this case probably represents the low-water mark in the amount of evidence necessary to allow the submission of an OUIL charge to a jury. We do point out, however, that we have no difficulty in the submission of the DWI charge to the jury. The circumstantial evidence was clearly strong enough to allow the jury to consider a DWI charge." 160 Mich App at 405. See also *People v Rizzo,* 243 Mich App 151, 162 (2000), citing *People v Crawford*, 187 Mich App 344, 350 (1991), and *Walters, supra* (a defendant may be convicted of OWI even though he or she is observed driving normally).

## C. Elements of OWI Under §625(1)(b)

The elements of this offense are set forth in MCL 257.625(1)(b) as follows:

**1. Defendant operated a motor vehicle on a Michigan highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for parking,**

It is not necessary for a defendant to possess a driver's license in order to be convicted of OWI. MCL 257.625(1).

**AND**

**2. At the time of operating the motor vehicle, defendant had an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.**

MCL 257.625(1)(b) creates a per se misdemeanor offense permitting a conviction based solely on the defendant's bodily alcohol content, without regard to whether alcohol affected the defendant's ability to operate the vehicle. See *People v Calvin,* 216 Mich App 403, 407 (1996). §625(1)(a) is an alternative charge to §625(1)(b). The prosecutor may charge both OUIL and UBAC as alternative theories, but the defendant can be convicted of only one of these offenses. Accordingly, the prosecutor should proceed on a single count complaint alleging alternative theories for conviction. *People v Nicolaides*, 148 Mich App 100, 103 (1985). Since the holding in *Nicolaides,* the drunk driving statutes have been amended and the OUIL and UBAC acronyms have been eliminated. However, under the current statutory structure, the prosecutor may charge under both §625(1)(a) and §625(1)(b) as alternative theories, but the defendant can only be convicted of one of these offenses.

## D. Penalties

The discussion below sets forth the criminal penalties, licensing sanctions, and vehicle sanctions imposed for first-time and repeat offenders convicted of OWI. See Section 2.9 of this volume for discussion of general sentencing considerations in all drunk driving cases (e.g., alcohol assessment, payment of costs, sentencing guidelines, etc.). See Section 2.10 of this volume on licensing sanctions generally. Section 2.11 of this volume addresses general procedures for forfeiture and immobilization of vehicles. Section 1.3 of this volume contains definitions of the following terms:

- Conviction — Section 1.3(B).
- Prior conviction — Section 1.3(G).
- Substantially corresponding ordinance or state statute — Section 1.3(I).

### 1. First Offense

**Criminal Penalties** — A first-time violator of §625(1) is guilty of a **misdemeanor** punishable by one or more of the following:

- community service for not more than 360 hours;
- imprisonment for not more than 93 days;
- a fine of not less than $100.00 or more than $500.00.

MCL 257.625(9)(a)(*i*)–(*iii*). The prison term may be suspended. See MCL 257.625(9)(d).

**Licensing Sanctions** — The Secretary of State shall suspend a first-time offender's license for 180 days. After the first 30 days of the suspension have elapsed, the Secretary of State may issue the offender a restricted license for a specified portion of the remaining suspension if the person is otherwise eligible for a license. MCL 257.319(8)(a), (15).

**Points** — First-time offenders are assessed six points for violating §625(1). MCL 257.320a(1)(c).

**Driver Responsibility Fee** — Upon posting of an abstract of conviction for violation of §625(1), or a law or ordinance substantially corresponding to §625(1), the Secretary of State shall assess a $1,000.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(a)(*iii*). See Section 6.4(B) of this volume for more information about driver responsibility fees.

**Vehicle Sanctions** — Vehicle immobilization may be ordered for not more than 180 days. MCL 257.904d(1)(a) and MCL 257.625(9)(e).

**Ignition Interlock Device** — The court has discretion to order as a condition of probation that an offender's vehicle be equipped with an ignition interlock device as described in MCL 257.625k and 257.625*l*. MCL 257.625(24).

### 2. Second Offense

**Criminal Penalties** — An offender who violates §625(1) within seven years of one prior conviction is guilty of a **misdemeanor** punishable by a mandatory fine of not less than $200.00 or more than $1,000.00 and one or more of the following:

- not less than five days or more than one year or imprisonment; or
- community service for not less than 30 days or more than 90 days; or
- both.

MCL 257.625(9)(b)(*i*)–(*ii*). Any term of imprisonment shall not be suspended, and no less than 48 hours of the term shall be served at a time. MCL 257.625(9)(b)(*i*), (d).

**License Sanctions** — Offenders convicted of violating §625(1) within seven years of a prior conviction are subject to mandatory driver's license revocation for a minimum of one year. MCL 257.303(5)(c), (7)(a). The period of revocation is the longer of the following:

- not less than one year from the date of revocation; or
- not less than five years from the date of revocation if the subsequent revocation occurs within seven years of a previous revocation; and
- "the person rebuts by clear and convincing evidence the presumption resulting from the prima facie evidence that he or she is a habitual offender. The convictions that resulted in the revocation and denial constitute prima facie evidence that he or she is a habitual offender"; and
- the person meets the Secretary of State's requirements.

MCL 257.303(7).

**Driver Responsibility Fee** — Upon posting of an abstract of a conviction for violation of §625(1), or a law or ordinance substantially corresponding to §625(1), the Secretary of State shall

assess a $1,000.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(a)(*iii*). See Section 6.4(B) of this volume for more information about driver responsibility fees.

*Forfeiture is permitted by MCL 257.625(9)(f).

**Vehicle Sanctions** — For a conviction under §625(1) within seven years of a prior conviction, the court must order vehicle immobilization for not less than 90 days or more than 180 days, unless forfeiture is ordered under MCL 257.625n.* MCL 257.904d(1)(c). Forfeiture may be ordered in the court's discretion if the offender has an ownership interest in the vehicle used in the offense. The court may order that a leased vehicle be returned to the lessor. MCL 257.625n(1).

**Ignition Interlock Device** — The court has discretion to order as a condition of probation that an offender's vehicle be equipped with an ignition interlock device as described in MCL 257.625k and 257.625*l*. MCL 257.625(24).

### 3. Third or Subsequent Offense

**Criminal Penalties** — An offender who violates §625(1) within ten years of two or more prior convictions is guilty of a **felony** punishable by a mandatory fine of not less than $500.00 or more than $5,000.00 and either of the following:

- imprisonment for not less than one year or more than five years under the jurisdiction of the Department of Corrections, or
- probation with imprisonment in the county jail for not less than 30 days or more than one year and community service for not less than 60 days or more than 180 days. Any term of imprisonment shall not be suspended, and no less than 48 hours of the term shall be served at a time.

MCL 257.625(9)(c)-(d).

**License Sanctions** — The Secretary of State must revoke the driver's licenses of repeat offenders who have two prior convictions of any of the offenses listed in the statute within ten years if any of the convictions resulted from an arrest on or after January 1, 1992. MCL 257.303(5)(g). The period of revocation is the longer of the following:

- not less than one year from the date of revocation; or
- not less than five years from the date of revocation if the subsequent revocation occurs within seven years of a previous revocation; and
- "the person rebuts by clear and convincing evidence the presumption resulting from the prima facie evidence that he or she

is a habitual offender. The convictions that resulted in the revocation and denial constitute prima facie evidence that he or she is a habitual offender"; and

- the person meets the Secretary of State's requirements

MCL 257.303(7).

**Driver Responsibility Fee** — Upon posting of an abstract of a conviction for violation of §625(1), or a law or ordinance substantially corresponding to §625(1), the Secretary of State shall assess a $1,000.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(a)(*iii*). See Section 6.4(B) of this volume for more information about driver responsibility fees.

**Vehicle Sanctions** — For a conviction under §625(1) within ten years after two or more prior convictions, the court must order vehicle immobilization for not less than one year or more than three years, unless the vehicle is forfeited. MCL 257.904d(1)(d). Forfeiture may be ordered in the court's discretion if the offender has an ownership interest in the vehicle used in the offense. The court may order that a leased vehicle be returned to the lessor. MCL 257.625n(1).

**Registration Denial —** The Secretary of State shall refuse issuance of a registration or a transfer of registration for a vehicle if the driver's license of the vehicle's owner, co-owner, lessee, or co-lessee is suspended, revoked, or denied for a third or subsequent violation of §625 or §625m or a local ordinance substantially corresponding to these sections. MCL 257.219(1)(d).

**Ignition Interlock Device** — The court has discretion to order as a condition of probation that an offender's vehicle be equipped with an ignition interlock device as described in MCL 257.625k and 257.625*l*. MCL 257.625(24).

## E. Issues

**Double Jeopardy.** In *People v Crawford,* 187 Mich App 344, 352 (1991), the Court of Appeals held that a conviction of OWI and felonious driving resulting from the same incident does not constitute multiple punishment for the same offense and therefore does not violate the double jeopardy clauses of the federal and Michigan constitutions.

**Using an offender's prior convictions to enhance a subsequent charge does not offend the prohibition against ex post facto laws.** In *People v Callon*, 256 Mich App 312, 315 (2003), the Michigan Court of Appeals upheld the use of a "prior conviction" to enhance a conviction of OWI to a felony. The defendant was convicted of OWI as a third offender. The defendant claimed that use of his "prior conviction" operated as an ex post

facto law because the prior OWVI occurred before the effective date of the amendment adding OWVI to the list of offenses in the enhancement statute. The Court held that the enhancement statute did not act as an ex post facto law because it did not attach legal consequences to the defendant's prior OWVI conviction, but rather attached legal consequences to the defendant's future conduct of committing an OWI. *Id*. at 318.

## 3.2 Permitting Another to Drive OWI or OWVI — §625(2)

### A. Statute

MCL 257.625(2) prohibits knowingly permitting or authorizing another person to operate a motor vehicle while intoxicated under the conditions set forth in MCL 257.625(1)(a) and (b) (described above in Section 3.1). In addition to OWI, §625(2) prohibits permitting a person to operate a motor vehicle if the person's ability to operate the vehicle is visibly impaired by his or her consumption of alcoholic liquor, a controlled substance, or a combination of alcohol and drugs. MCL 257.625(2)(c). MCL 257.625(2) states:

> "The owner of a vehicle or a person in charge or in control of a vehicle shall not authorize or knowingly permit the vehicle to be operated upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles, within this state by a person if any of the following apply:
>
> > "(a) The person is under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.
> >
> > "(b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine or, beginning October 1, 2013, the person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
> >
> > "(c) The person's ability to operate the motor vehicle is visibly impaired due to the consumption of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance."

### B. Elements

**1. The defendant was the owner, the person in charge, or the person in control of a motor vehicle;**

**AND**

**2. The defendant authorized or knowingly permitted another to operate the motor vehicle on a Michigan highway or other place open to the general public or generally accessible to motor vehicles,* including an area designated for parking;**

*See Section 1.3 of this volume for definitions of "operate," and "generally accessible to motor vehicles."

**AND**

**3. The operator of the vehicle:**

**a.** Was under the influence of intoxicating liquor, a controlled substance, or a combination of intoxicating liquor and a controlled substance, so that the operator's mental or physical condition was significantly affected and he or she was no longer able to operate a vehicle in a normal manner; **or**

**b.** Was operating the vehicle with an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine;* **or**

*On October 1, 2013, the level at which a person's bodily alcohol content will be unlawful returns to 0.10 grams or more.

**c.** Was visibly impaired in his or her ability to operate the vehicle due to the consumption of alcohol and/or a controlled substance.

See Section 3.1(B), above, for a definition of "under the influence." See Section 3.3(B), above, for discussion of what constitutes "visible impairment." A "controlled substance" is defined in Section 1.3(A) of this volume.

Elements 3a and 3b above represent alternative elements to this offense. See Section 3.1, above, for a discussion of case law related to the alternative charges available under §625(1) (where the operator is the offender).

Element 3b above creates a per se misdemeanor offense permitting conviction based solely on the driver's bodily alcohol content, without regard to whether the alcohol affected the driver's ability to operate the vehicle.

## C. Penalties

**Criminal Penalties** — Depending on the existence and severity of injuries caused by the person operating the motor vehicle, MCL 257.625(10) sets forth three levels of criminal penalties for a defendant who violates §625(2):

- **Operator Causes Death.** If the person operating the motor vehicle causes death in violation of MCL 257.625(4), the defendant is guilty of a **felony** punishable by imprisonment for not more than five years, a fine of not less than $1,500.00 or more than $10,000.00, or both. MCL 257.625(10)(b).

- **Operator Causes Serious Impairment of Body Function.** If the person operating the motor vehicle causes serious impairment of body function in violation of MCL 257.625(5), the defendant is guilty of a **felony** punishable by imprisonment for not more than two years, a fine of not less than $1,000.00 or more than $5,000.00, or both. MCL 257.625(10)(c).

- **All Other Cases**. In all other cases where the operator's conduct did not result in death or serious impairment of body function, the defendant is guilty of a **misdemeanor** punishable by imprisonment for not more than 93 days, a fine of not less than $100.00 or more than $500.00, or both. MCL 257.625(10)(a).

**Licensing and Vehicle Sanctions** — None.

**Note:** A conviction under Vehicle Code §625(2) is not counted as a prior conviction for purposes of enhancing penalties for repeat drunk driving offenders. MCL 257.625(25)(a)(*i*).

## 3.3 Operating While Visibly Impaired (OWVI) — §625(3)

### A. Statute

MCL 257.625(3) states:

> "A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state when, due to the consumption of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance, the person's ability to operate the vehicle is visibly impaired. If a person is charged with violating subsection (1) [OWI], a finding of guilty under this subsection may be rendered."

**Note:** The following criminal jury instructions may be used in OWVI cases:

CJI2d 15.2 Elements Common to OWI and OWVI

CJI2d 15.4 Specific Elements of OWVI

CJI2d 15.5 Factors in Considering OWI and OWVI

CJI2d 15.6 Possible Verdicts

CJI2d 15.7 Verdict Form

CJI2d 15.9 Defendant's Decision to Forgo Chemical Testing

## B. Elements

The elements of OWVI are as follows:

**1. Defendant operated a motor vehicle on a Michigan highway or other place open to the general public or generally accessible to motor vehicles,* including an area designated for the parking of vehicles;**

*For discussion of the meaning of "operating" a motor vehicle and "generally accessible to motor vehicles," see Section 1.3 of this volume.

It is not necessary for a defendant to possess a driver's license in order to be convicted of OWVI. MCL 257.625(3).

**AND**

**2. Defendant had consumed alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance;***

*See Section 1.3(A) of this volume for the definition of "controlled substance."

**AND**

**3. Because of the consumption of alcoholic liquor and/or a controlled substance, defendant's ability to operate the vehicle was visibly impaired.**

The Michigan Supreme Court has defined visible impairment as follows:

> "[The] defendant's ability to drive was so weakened or reduced by consumption of intoxicating liquor that defendant drove with less ability than would an ordinary, careful and prudent driver. Such weakening or reduction of ability to drive must be visible to an ordinary, observant person." *People v Lambert*, 395 Mich 296, 305 (1975).

The degree of a person's intoxication for purposes of §625(3) may be established by testimony of someone who saw the impaired driving. *People v Calvin*, 216 Mich App 403, 407–408 (1996).

Circumstantial evidence may also be used to establish that a person was driving while visibly impaired. In *People v Walters*, 160 Mich App 396, 403 (1987), the defendant Walters was charged with OWI and convicted by a jury of the lesser-included offense of driving while impaired. A police officer testified that he saw Walters drive about 30 feet along the road, stop, and back into a driveway. The officer said he did not notice anything abnormal about Walters's driving; however, Walters smelled of alcohol, his eyes were glazed and bloodshot, and he swayed slightly on his feet. On appeal from his conviction, Walters asserted that he could not be convicted of OWI or driving while impaired when the

officer saw him driving normally. The Court of Appeals affirmed the conviction, holding that the circumstantial evidence presented was sufficient to establish that Walters was unable to drive normally. In so holding, the panel noted that "this case probably represents the low-water mark in the amount of evidence necessary to allow the submission of an OUIL [OWI] charge to a jury. We do point out, however, that we have no difficulty in the submission of the DWI [OWVI] charge to the jury. The circumstantial evidence was clearly strong enough to allow the jury to consider a DWI charge." 160 Mich App at 405.

## C. Penalties

The discussion below sets forth the criminal penalties, licensing sanctions, and vehicle sanctions imposed for first-time and repeat offenders convicted of violating MCL 257.625(3). Section 1.3 of this volume contains definitions of the following terms:

- Conviction — Section 1.3(B).
- Prior conviction — Section 1.3(G).
- Substantially corresponding ordinance or state statute — Section 1.3(I).

### 1. First Offense

**Criminal Penalties** — A first-time offender convicted of violating §625(3) is guilty of a **misdemeanor** and subject to one or more of the following:

- community service for not more than 360 hours;
- imprisonment for not more than 93 days;
- a fine of not more than $300.00.

MCL 257.625(11)(a). The prison term may be suspended. See MCL 257.625(11)(d).

**Licensing Sanctions** — If the offender's impairment was due to alcohol alone, the Secretary of State shall suspend the offender's license for 90 days. The period of suspension is increased to 180 days if the offender was convicted of violating §625(3) for operating a vehicle when the person's ability was impaired by consumption of a controlled substance or a combination of alcohol and a controlled substance. The Secretary of State may issue the offender a restricted license for all or part of the suspension if the person is otherwise eligible for a license. MCL 257.319(8)(b) and (15).

**Points** — First-time offenders are assessed four points for violating §625(3) or a substantially corresponding law or ordinance. MCL 257.320a(1)(*i*).

**Driver Responsibility Fee** — Upon posting of an abstract of a conviction for violation of §625(3), or a law or ordinance substantially corresponding to §625(3), the Secretary of State shall assess a $500.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(b)(*i*). See Section 6.4(B) of this volume for more information about driver responsibility fees.

**Vehicle Sanctions** — The court may order vehicle immobilization for not more than 180 days. MCL 257.904d(1)(a), MCL 257.625(11)(e).

### 2. Second Offense

**Criminal Penalties** — An offender who violates §625(3) within seven years of a prior conviction is guilty of a **misdemeanor** punishable by a mandatory fine of not less than $200.00 or more than $1,000.00 and one or more of the following:

- not less than five days or more than one year of imprisonment;
- community service for not less than 30 days or more than 90 days.

MCL 257.625(11)(b). Any term of imprisonment shall not be suspended, and no less than 48 hours of the term shall be served at a time. MCL 257.625(11)(b)(*i*) and (d).

**Licensing Sanctions** — An offender convicted of violating MCL 257.625(3) within seven years of one prior conviction is subject to mandatory driver's license revocation for a minimum of one year. MCL 257.303(5)(c), (7)(a). The period of revocation is the longer of the following:

- not less than one year from the date of revocation; or
- not less than five years from the date of revocation if the subsequent revocation occurs within seven years of a previous revocation; and
- "the person rebuts by clear and convincing evidence the presumption resulting from the prima facie evidence that he or she is a habitual offender. The convictions that resulted in the revocation and denial constitute prima facie evidence that he or she is a habitual offender"; and
- the person meets the Secretary of State's requirements.

MCL 257.303(7).

**Driver Responsibility Fee** — Upon posting of an abstract of a conviction for violation of §625(3), or a law or ordinance substantially corresponding to §625(3), the Secretary of State shall assess a $500.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(b)(*i*). See Section 6.4(B) of this volume for more information about driver responsibility fees.

**Vehicle Sanctions** — Vehicle forfeiture under MCL 257.625n is discretionary for offenders with one prior conviction within seven years. MCL 257.625(11)(f). If, however, the court does not order forfeiture, it must order vehicle immobilization under MCL 257.904d. MCL 257.625(11)(e). Immobilization is mandatory for a period of not less than 90 or more than 180 days. MCL 257.904d(1)(c).

### 3. Third or Subsequent Offense

**Criminal Penalties** — If the violation occurs within ten years of two or more prior convictions, the offender is guilty of a **felony** punishable by a mandatory fine of not less than $500.00 or more than $5,000.00 and either:

- imprisonment under the jurisdiction of the Department of Corrections for not less than one year or more than five years, or
- probation with imprisonment in the county jail for not less than 30 days or more than one year and not less than 60 days or more than 180 days of community service. No less than 48 hours of any term of imprisonment shall be served at a time.

MCL 257.625(11)(c). A term of imprisonment shall not be suspended. MCL 257.625(11)(d).

**Licensing Sanctions** — An offender with two or more prior convictions within ten years (if any of the convictions resulted from arrest on or after January 1, 1992) is subject to mandatory license revocation. MCL 257.303(5)(g). The period of revocation is the longer of the following:

- not less than one year from the date of revocation; or
- not less than five years from the date of revocation if the subsequent revocation occurred within seven years of a previous revocation; and
- "the person rebuts by clear and convincing evidence the presumption resulting from the prima facie evidence that he or she is a habitual offender. The convictions that resulted in the revocation and denial constitute prima facie evidence that he or she is a habitual offender"; and

- the person meets the Secretary of State's requirements.

MCL 257.303(7).

**Driver Responsibility Fee** — Upon posting of an abstract of a conviction for violation of §625(3), or a law or ordinance substantially corresponding to §625(3), the Secretary of State shall assess a $500.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(b)(*i*). See Section 6.4(B) of this volume for more information about driver responsibility fees.

**Vehicle Sanctions** — Unless the court orders vehicle forfeiture under MCL 257.625n, the court must order vehicle immobilization under MCL 257.904d. MCL 257.625(11)(e), (f). Mandatory vehicle immobilization is for not less than one year and not more than three years. MCL 257.904d(1)(d).

**Registration Denial** — The Secretary of State shall refuse issuance of a registration or a transfer of registration for a vehicle if the driver's license of the vehicle's owner, co-owner, lessee, or co-lessee is suspended, revoked, or denied for a third or subsequent violation of §625 or §625m or a local ordinance substantially corresponding to these sections. MCL 257.219(1)(d).

## 3.4 OWI or OWVI Causing Death of Another — §625(4)

### A. Statute

MCL 257.625(4) states:

> "A person, whether licensed or not, who operates a motor vehicle in violation of subsection (1), (3), or (8) and by the operation of that motor vehicle causes the death of another person is guilty of a crime as follows:
>
> > "(a) Except as provided in subdivision (b), the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not less than $2,500.00 or more than $10,000.00, or both. The judgment of sentence may impose the sanction permitted under section 625n. If the vehicle is not ordered forfeited under section 625n, the court shall order vehicle immobilization under section 904d in the judgment of sentence.
> >
> > "(b) If, at the time of the violation, the person is operating a motor vehicle in a manner proscribed under section 653a* and causes the death of a police officer, firefighter, or other emergency response personnel, the person is

*See Volume 1, Section 3.43, for discussion of MCL 257.653a.

guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not less than $2,500.00 or more than $10,000.00, or both. This subdivision applies regardless of whether the person is charged with the violation of section 653a. The judgment of sentence may impose the sanction permitted under section 625n. If the vehicle is not ordered forfeited under section 625n, the court shall order vehicle immobilization under section 904d in the judgment of sentence."

## B. Elements

*See also CJI2d 15.11.

MCL 257.625(4) provides the penalties for violations of §625 (1), (3) and (8) where death results from the violation. The elements of this offense* are as follows:

*See Section 1.3 of this volume for definition of the terms "operating" and "generally accessible to motor vehicles" as used in the statute.

**1. Defendant operated a motor vehicle on a Michigan highway or other place open to the general public or generally accessible to motor vehicles, including a designated parking area,***

It is not necessary for a defendant to possess a driver's license in order to be convicted of this offense. MCL 257.625(1), (3), and (8).

**AND**

*See Sections 3.1, 3.3, and 3.8 for discussion of these offenses.

**2. The defendant was operating the vehicle in violation of §625(1), (3), or (8)* because he or she:**

**a)** was under the influence of alcohol and/or a controlled substance;

**b)** had an unlawful bodily alcohol content;

**c)** was visibly impaired in his or her ability to operate the vehicle because of the consumption of alcoholic liquor and/or a controlled substance; or

**d)** had any amount of a controlled substance in his or her body;

**AND**

**3. The defendant voluntarily decided to drive knowing that he or she had consumed alcohol and/or a controlled substance and might be intoxicated,**

In *People v Lardie,* 452 Mich 231, 256, 259 (1996), the Michigan Supreme Court held that §625(4) is a general intent offense, requiring proof that the defendant intended to drive knowing that he or she might be intoxicated. In so holding, the Court explained:

> "[I]n creating this irrebuttable presumption of gross negligence from the wrongful act, the Legislature intended to deter drunk driving and, therefore, must have intended that the people prove that the driver voluntarily, i.e., "willingly," decided to commit this culpable act.
>
> * * *
>
> "[C]onsistent with the Legislature's decision to presume gross negligence as a matter of law and its desire to deter intoxicated driving, the Legislature must reasonably have intended that the people prove a mens rea by demonstrating that the defendant purposefully drove while intoxicated or, in other words, that he had the general intent to perform the wrongful act." *Lardie, supra*, 452 Mich at 252–253, 256 (emphasis in original).

**AND**

**4. By the operation of the vehicle, the defendant caused the death of another person.**

The defendant's decision to drive while intoxicated must substantially contribute to another person's death. In proving causation, the prosecutor must establish that the defendant's decision to drive while intoxicated produced a change in the defendant's operation of the vehicle that caused another's death. The statute does not penalize a driver if the injury was unavoidable regardless of the driver's intoxication. *Lardie, supra,* 452 Mich at 258–260.

> **Note:** The majority opinion in *Lardie* noted that its standard for causation is consistent with the common-law causation standard articulated in *People v Tims,* 449 Mich 83, 97–99 (1995), which involved involuntary manslaughter with a vehicle. In *Tims*, the Supreme Court held that a defendant's conduct need only be "a" proximate cause of death, rather than "the" sole cause. See *Lardie, supra,* 452 Mich at 260 n 51. For a jury instruction on the victim's contributory negligence, see CJI2d 16.20.

In cases involving negligent homicide under MCL 750.324, the Court of Appeals has held that evidence of the decedent's failure to wear a seat belt was inadmissible at trial to prove contributory negligence because it was not relevant to causation of the accident. *People v Burt*, 173 Mich App 332, 334 (1988); *People v Richardson*, 170 Mich App 470, 472 (1988). But see *People v Moore*, 246 Mich App 172 (2001), discussed at Section 9.1 of this

volume, for an instance where such evidence was admissible for its relevance to causation of the accident.

## C. Issues

Defendants charged with violating Vehicle Code §625(4) are frequently subject to common-law murder charges as well. In the following cases, the Michigan Supreme Court considered issues arising from charging defendants with these multiple counts:

### 1. Double Jeopardy

A conviction of both involuntary manslaughter under MCL 750.321 and OWI causing death under Vehicle Code §625(4) is not violative of state or federal double jeopardy provisions. *People v Price*, 214 Mich App 538, 541–46 (1995), and *People v Kulpinski,* 243 Mich App 8, 11–24 (2000).

A conviction of both second-degree murder under MCL 750.317 and OWI causing death under Vehicle Code §625(4) is not violative of state or federal double jeopardy provisions. *People v Werner*, 254 Mich App 528, 535–536 (2002).

### 2. Distinguishing Requisite Intent for Second-degree Murder and OWI Causing Death

In *People v Goecke*, 457 Mich 442 (1998), the Supreme Court distinguished "malice" as an element of second-degree murder from the intent required to establish OWI causing death. To establish "malice" in a second-degree murder case, the prosecutor must establish "the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." 457 Mich at 464. The third form of malice may be implied "when the defendant does an act with a high probability that it will result in death and does it with a base antisocial motive and with wanton disregard for human life." 457 Mich at 467. The "wanton" nature of the defendant's actions distinguishes the intent requirement for second-degree murder from the intent required for OWI causing death. Noting that the misconduct in the consolidated cases before the Court went beyond drunk driving, the *Goecke* majority specifically rejected the contention that drunk driving alone is sufficient to establish the element of malice for purposes of sustaining a conviction or deciding whether there is sufficient evidence to bind a defendant over for trial on charges of second-degree murder. 457 Mich at 469.

In *People v Werner,* 254 Mich App 528 (2002), the Court of Appeals reaffirmed the principle articulated in *Goecke, supra* that extreme intoxication does not necessarily require proof that the defendant was "subjectively" aware of the risk created by his or her conduct. In *Werner*, the defendant was convicted of second-degree murder and OWI causing death after becoming

seriously intoxicated and driving his pickup truck the wrong direction on a freeway and colliding with a Jeep, killing the passenger and seriously injuring the driver. During the trial, the prosecution showed that defendant was not only extremely intoxicated but that he also knew, from a recent incident, that if he drank alcohol he could experience a blackout and drive recklessly and irresponsibly. On appeal, relying on dicta in *Goecke*, defendant claimed that the trial court erred in denying his motion for directed verdict because there was insufficient evidence to support his second-degree murder conviction. Specifically, defendant argued that since he was seriously intoxicated and since this was a "highly unusual case," the prosecutor was required to prove that he was "subjectively" aware of the risk of death or great bodily harm. The Court of Appeals disagreed, stating:

> "*Goecke* did not expressly prescribe a subjective analysis for malice in cases of extreme intoxication. . . . [T]he Court recognized that, theoretically, a 'highly unusual case' may require a determination of whether the defendant was subjectively aware of the risk his conduct created, such as where the defendant was 'more absentminded, stupid or intoxicated than the reasonable man.' . . . This is not the same as stating, as defendant suggests, that plaintiff should have been held to a higher standard of proof of intent because defendant was so severely intoxicated. If defendant's argument is correct, it would mean that moderately intoxicated drivers could be tried for and convicted of second-degree murder while severely intoxicated drivers would be excused because they were too intoxicated to know what they were doing. This would be contrary to the *Goecke* Court's statement that 'malice requires egregious circumstances.' . . . It also would effectively create for some defendants an intoxication defense to second-degree murder, which would be plainly contrary to the *Goecke* Court's holding that voluntary intoxication is not a defense to a second-degree murder charge. . . . Accordingly, an advanced state of voluntary intoxication is not sufficient to qualify as the sort of 'unusual case' that requires a subjective determination of awareness under *Goecke*." *Werner, supra* at 532–533. [Citations omitted.]

In concluding that the trial court did not err in denying defendant's motion for directed verdict, and that there was sufficient evidence to support his second-degree murder conviction, the Court held that this was "not a case where a defendant merely undertook the risk of driving after drinking." *Id*. at 533. Instead, the Court found that "[d]efendant knew, from a recent prior incident, that his drinking did more than simply impair his judgment and reflexes. He knew that he might actually become so overwhelmed by the effects of alcohol that he would completely lose track of what he was doing with his vehicle. If defendant knew that drinking before driving could cause him to crash on boulders in front of a house, without any knowledge of where he was or what he was doing, he knew that another drunk driving episode could cause him to make another major mistake, one that would have tragic consequences." *Id*.

## D. Penalties

Persons convicted of violating §625(4) are guilty of a felony punishable by the penalties and sanctions described below. See Section 2.9 of this volume for discussion of general sentencing considerations in all drunk driving cases. See Section 2.10 of this volume on licensing sanctions generally. Section 2.11 of this volume addresses general procedures for forfeiture and immobilization of vehicles. Section 1.3 of this volume contains definitions of the following terms:

- Conviction — Section 1.3(B).
- Prior conviction — Section 1.3(G).
- Substantially corresponding ordinance or state statute — Section 1.3(I).

### 1. Penalties Applicable to All §625(4) Offenders

Under MCL 257.625(4)(a), both first-time and repeat offenders whose violations of §625(1), (3), or (8) caused another person's death are guilty of a **felony** punishable by:

- imprisonment for not more than 15 years; or
- a fine of not less than $2,500.00 or more than $10,000.00; or
- both.

MCL 257.625(4)(a). However, if at the time of the offender's violation of §625(4) the offender is also violating MCL 257.653a, and if the defendant causes the death of a police officer, firefighter, or other emergency response personnel, he or she is guilty of a **felony** punishable by imprisonment for not more than 20 years, a fine of not less than $2,500.00 or more than $10,000.00, or both. MCL 257.625(4)(b).

A person may be charged with and convicted of a violation of MCL 257.625(4) for each death arising out of the same transaction, and the court may order the sentences to run consecutively to each other. MCL 769.36(1)(a).

**Points** — Offenders are assessed six points for a violation of §625(4) or a law or local ordinance substantially corresponding to it. MCL 257.320a(1)(c).

**Driver Responsibility Fee** — Upon posting of an abstract of a conviction for violation of §625(4), or a law or ordinance substantially corresponding to §625(4), the Secretary of State shall assess a $1,000.00 driver responsibility fee for two consecutive

years. MCL 257.732a(2)(a)(*iii*). See Section 6.4(B) of this volume for more information about driver responsibility fees.

### 2. First Offense

**Licensing Sanctions** — A first-time offender convicted of violating §625(4) is subject to mandatory license revocation for a period of not less than one year. MCL 257.303(5)(d), (7)(a)(*i*).

**Vehicle Sanctions** — The court has discretion to order vehicle forfeiture under MCL 257.625n. If, however, the court does not order forfeiture, the court must order vehicle immobilization pursuant to MCL 257.904d. MCL 257.625(4). Vehicle immobilization may not exceed 180 days. MCL 257.904d(1)(b).

### 3. Second or Subsequent Offense

**Licensing Sanctions** — If the subsequent offense occurs within seven years of the date on which the offender's license was revoked for the prior conviction, the offender's license revocation is for a period of not less than five years. MCL 257.303(5)(d), (7)(a)(*ii*).

**Vehicle Sanctions** — If a person is convicted of violating §625(4) within seven years after one prior conviction, the court has discretion to order vehicle forfeiture under MCL 257.625n. If the court does not order forfeiture, it must order vehicle immobilization for not less than 90 days and not more than 180 days. MCL 257.625(4) and MCL 257.904d(1)(c).

The court also has discretion to order vehicle forfeiture when a person is convicted of violating §625(4) within ten years of two prior convictions. Should the court not order vehicle forfeiture under MCL 257.625n, it must order immobilization for not less than one year and not more than three years. MCL 257.904d(1)(d).

**Registration Denial** — The Secretary of State shall refuse issuance of a registration or a transfer of registration for a vehicle if the driver's license of the vehicle's owner, co-owner, lessee, or co-lessee is suspended, revoked, or denied for a third or subsequent violation of §625 or §625m or a local ordinance substantially corresponding to these sections. MCL 257.219(1)(d).

# 3.5 OWI or OWVI Causing Serious Impairment of a Body Function — §625(5)

## A. Statute

MCL 257.625(5) states:

> "A person, whether licensed or not, who operates a motor vehicle in violation of subsection (1), (3), or (8) and by the operation of that motor vehicle causes a serious impairment of a body function of another person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not less than $1,000.00 or more than $5,000.00, or both. The judgment of sentence may impose the sanction permitted under section 625n. If the vehicle is not ordered forfeited under section 625n, the court shall order vehicle immobilization under section 904d in the judgment of sentence."

## B. Elements

*See also CJI2d 15.12.

MCL 257.625(5) provides the penalties for violations of §625(1), (3), and (8) where the violation causes serious impairment of a body function of another person. The elements of this offense* are as follows:

*See Section 1.3 of this volume for definition of the terms "operating" and "generally accessible to motor vehicles" as used in this statute.

**1. Defendant operated a motor vehicle on a Michigan highway or other place open to the general public or generally accessible to motor vehicles, including a designated parking area,***

> It is not necessary for a defendant to possess a driver's license in order to be convicted of this offense. MCL 257.625(5).

**AND**

*See Sections 3.1, 3.3, and 3.8 for discussion of these offenses.

**2. The defendant was operating the vehicle in violation of §625(1), (3), or (8)* because he or she:**

**a)** was under the influence of alcohol and/or a controlled substance;

**b)** had an unlawful bodily alcohol content;

**c)** was visibly impaired in his or her ability to operate the vehicle because of the consumption of alcohol liquor and/or a controlled substance; or

**d)** had any amount of a controlled substance in his or her body;

**AND**

**3. The defendant voluntarily decided to drive knowing that he or she had consumed alcohol and/or a controlled substance and might be intoxicated.**

The Michigan Supreme Court has addressed the element of criminal intent in a case involving OWI causing death under Vehicle Code §625(4). See the discussion in Section 3.4(B), above, regarding *People v Lardie,* 452 Mich 231, 256, 259 (1996) (where the Court held that §625(4) is a general intent offense, requiring proof that the defendant intended to drive knowing that he or she might be intoxicated.)

**AND**

**4. By the operation of the vehicle, the defendant caused another person to suffer serious impairment of a body function.**

The Michigan Supreme Court has addressed the standard for determining causation in a case involving OWI causing death under §625(4). In *Lardie, supra,* 452 Mich at 258–260, the Court stated that the defendant's decision to drive while intoxicated must substantially contribute to another person's death. In proving causation, the prosecutor must establish that the defendant's decision to drive while intoxicated produced a change in the defendant's operation of the vehicle that caused another's death. The statute does not penalize a driver if the injury was unavoidable regardless of the driver's intoxication.

> **Note:** The majority opinion in *Lardie* noted that its standard for causation is consistent with the common-law causation standard articulated in *People v Tims,* 449 Mich 83, 97–99 (1995), which involved involuntary manslaughter with a vehicle. In *Tims*, the Supreme Court held that a defendant's conduct need only be "a" proximate cause of death, rather than "the" sole cause. See *Lardie, supra,* 452 Mich at 260 n 51. For a jury instruction on the victim's contributory negligence, see CJI2d 16.20.

In cases involving negligent homicide under MCL 750.324, the Court of Appeals has held that evidence of the decedent's failure to wear a seat belt was inadmissible at trial to prove contributory negligence because it was not relevant to causation of the accident. *People v Burt,* 173 Mich App 332, 334 (1988); *People v Richardson*, 170 Mich App 470, 472 (1988). But see *People v Moore,* 246 Mich App 172 (2001), discussed at Section 9.1 of this volume, for an instance where such evidence was admissible for its relevance to causation of the accident.

## C. Penalties

Under §625(5), individuals convicted of violating MCL 257.625(1), (3), or (8) and whose violations cause another person to suffer serious impairment of a body function are guilty of a **felony** punishable by the penalties and sanctions described below. See Section 2.9 of this volume for discussion of general sentencing considerations in all drunk driving cases. See Section 2.10 of this volume on licensing sanctions generally. Section 2.11 of this volume addresses general procedures for forfeiture and immobilization of vehicles. Section 1.3 of this volume contains definitions of the following terms:

- Conviction — Section 1.3(B).
- Prior conviction — Section 1.3(G).
- Substantially corresponding ordinance or state statute — Section 1.3(I).

### 1. Criminal Penalties Applicable to All §625(5) Offenders

Under MCL 257.625(5), both first-time and repeat offenders convicted of violating §625(1), (3), or (8) resulting in serious impairment of a body function of another are guilty of a **felony** punishable by:

- imprisonment for not more than five years;
- a fine of not less than $1,000.00 or more than $5,000.00; or
- both.

MCL 257.625(5).

**Points** — The Secretary of State will assess six points for a violation of §625(5) or a law or local ordinance substantially corresponding to it. MCL 257.320a(1)(c).

**Driver Responsibility Fee** — Upon posting of an abstract of a conviction for violation of §625(5), or a law or ordinance substantially corresponding to §625(5), the Secretary of State shall assess a $1,000.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(a)(*iii*). See Section 6.4(B) of this volume for more information about driver responsibility fees.

### 2. First Offense

**Licensing Sanctions** — A first-time offender is subject to mandatory license revocation for a period of not less than one year. MCL 257.303(5)(d), (7)(a)(*i*).

**Vehicle Sanctions** — The court has discretion to order vehicle forfeiture under MCL 257.625n for an offender's first conviction.

If the court does not order forfeiture of the vehicle, it must order vehicle immobilization for up to 180 days. MCL 257.625(5) and MCL 257.904d(1)(b).

### 3. Second or Subsequent Offense

**Licensing Sanctions** — If the subsequent offense occurs within seven years of the date on which the offender's license was revoked for the prior conviction, the offender's license revocation is for a period of not less than five years. MCL 257.303(5)(d), (7)(a)(*ii*).

**Vehicle Sanctions** — If a person is convicted of violating §625(5) within seven years after one prior conviction, the court has discretion to order vehicle forfeiture under MCL 257.625n. If the court does not order forfeiture, it must order vehicle immobilization for not less than 90 days and not more than 180 days. MCL 257.625(5) and MCL 257.904d(1)(c).

The court also has discretion to order vehicle forfeiture when a person is convicted of violating §625(5) within ten years of two prior convictions. Should the court not order vehicle forfeiture under MCL 257.625n, it must order immobilization for not less than one year and not more than three years. MCL 257.904d(1)(d).

**Registration Denial** — The Secretary of State shall refuse issuance of a registration or a transfer of registration for a vehicle if the driver's license of the vehicle's owner, co-owner, lessee, or co-lessee is suspended, revoked, or denied for a third or subsequent violation of §625 or §625m or a local ordinance substantially corresponding to these sections. MCL 257.219(1)(d).

## 3.6 "Zero Tolerance" Violations — §625(6)

### A. Statute

MCL 257.625(6) states:

> "A person who is less than 21 years of age, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person has any bodily alcohol content. As used in this subsection, 'any bodily alcohol content' means either of the following:
>
> > "(a) An alcohol content of 0.02 grams or more but less than 0.08 grams per 100 milliliters of blood, per 210 liters of

> breath, or per 67 milliliters of urine, or, beginning October 1, 2013, the person has an alcohol content of 0.02 grams or more but less than 0.10 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
>
> "(b) Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony."

## B. Elements

MCL 257.625(6) prohibits an individual under the age of 21 from operating a motor vehicle if he or she has "any bodily alcohol content." The elements of this offense are as follows:

**1. Defendant operated a motor vehicle on a Michigan highway or other place open to the general public or generally accessible to motor vehicles, including a designated parking area,***

* See Section 1.3 of this volume for definition of the terms "operating" and "generally accessible to motor vehicles" as used in the statute.

> It is not necessary for a defendant to possess a driver's license in order to be convicted of this offense. MCL 257.625(6).

**AND**

**2. The defendant was less than 21 years of age,**

**AND**

**3. The defendant had "any bodily alcohol content."**

> The statute defines "any bodily alcohol content" to mean either of the following:
>
> - An alcohol content of not less than 0.02 grams or more than 0.08 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
> - Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as part of a generally recognized religious service or ceremony.

In a prosecution for a violation of §625(6), the defendant bears the burden of proving that the consumption of intoxicating liquor was a part of a generally recognized religious service or ceremony by a preponderance of the evidence. MCL 257.625(23).

## C. Penalties

The discussion below sets forth the criminal penalties and licensing sanctions imposed for first-time and repeat offenders convicted of violating §625(6). The Vehicle Code imposes no vehicle sanctions (i.e., immobilization or forfeiture) for §625(6) violations.

See Section 2.9 of this volume for discussion of general sentencing considerations in all drunk driving cases. See Section 2.10 of this volume on licensing sanctions generally. Section 1.3 of this volume contains definitions of the following terms:

- Conviction — Section 1.3(B).
- Prior conviction — Section 1.3(G).
- Substantially corresponding ordinance or state statute — Section 1.3(I).

See Miller, *Juvenile Traffic Benchbook—Revised Edition* (MJI, 2005) for discussion of proceedings involving persons under the age of 17.

### 1. First Offense

A first-time offender convicted of violating MCL 257.625(6) is guilty of a **misdemeanor** punishable by:

- community service for not more than 360 hours;
- a fine of not more than $250.00; or
- both.

MCL 257.625(12)(a).

**Licensing Sanctions** — A first-time offender is subject to a mandatory 30-day suspension of his or her driver's license. The Secretary of State may issue a restricted license for all or part of the suspension period if the person is otherwise eligible for a license. MCL 257.319(8)(c), (15).

**Points** — Violators of §625(6) or a substantially corresponding law or ordinance are assessed four points. MCL 257.320a(1)(i).

**Driver Responsibility Fee** — Upon posting of an abstract of a conviction for violation of §625(6), or a law or ordinance substantially corresponding to §625(6), the Secretary of State shall assess a $500.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(b)(*i*). See Section 6.4(B) of this volume for more information about driver responsibility fees.

### 2. Second Offense

An individual convicted of violating MCL 257.625(6) within seven years of one or more prior convictions is guilty of a **misdemeanor** punishable by one or more of the following:

- community service for not more than 60 days;
- a fine of not more than $500.00;
- imprisonment for not more than 93 days.

MCL 257.625(12)(b).

**Licensing Sanctions** — Repeat offenders are subject to a mandatory 90-day license suspension for subsequent violations of §625(6) within seven years of a prior conviction for §625(6). MCL 257.319(8)(d). There is no provision in the statute for issuing a restricted license to persons subject to this 90-day suspension.

If the person has one or more prior convictions other than a conviction of violating §625(6) within seven years, the Secretary of State shall revoke the person's driver's license for a minimum of one year upon conviction of a violation of §625(6). MCL 257.303(5)(c), (7)(a).

**Points** — Violators of §625(6) are assessed four points. MCL 257.320a(1)(i).

**Driver Responsibility Fee** — Upon posting of an abstract of a conviction for violation of §625(6), or a law or ordinance substantially corresponding to §625(6), the Secretary of State shall assess a $500.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(b)(*i*). See Section 6.4(B) of this volume for more information about driver responsibility fees.

## 3.7 Child Endangerment — §625(7)

### A. Statute

MCL 257.625(7) states in part:

> "A person, whether licensed or not, is subject to the following requirements:
>
> > "(a) He or she shall not operate a vehicle in violation of subsection (1), (3), (4), (5), or (8) while another person who is less than 16 years of age is occupying the vehicle.

> A person who violates this subdivision is guilty of a crime . . . .
>
> * * *
>
> "(b) He or she shall not operate a vehicle in violation of subsection (6) while another person who is less than 16 years of age is occupying the vehicle. A person who violates this subdivision is guilty of a misdemeanor . . . ."

## B. Elements

MCL 257.625(7) provides penalties for violations of §625 when a person younger than age 16 is occupying the vehicle. The elements of child endangerment are as follows:

**1. Defendant operated a motor vehicle on a Michigan highway or other place open to the general public or generally accessible to motor vehicles, including a designated parking area,***

*See Section 1.3 of this volume for definition of the terms "operating" and "generally accessible to motor vehicles" as used in the statute.

> It is not necessary for a defendant to possess a driver's license in order to be convicted of this offense. MCL 257.625(7).

**AND**

**2. While defendant was operating the vehicle, another person less than 16 years of age was occupying the vehicle,**

**AND**

**3. The defendant was operating the vehicle in violation of Vehicle Code §625(1), (3), (4), (5), (6), or (8).**

> This statute creates a separate offense for endangering a person under 16 years of age while committing one of the following drunk driving offenses:
>
> a) driving under the influence of alcohol and/or a controlled substance in violation of §625(1);
>
> b) driving with an unlawful bodily alcohol content in violation of §625(1);
>
> c) driving while visibly impaired because of the consumption of alcoholic liquor and/or a controlled substance in violation of §625(3);
>
> d) OWI or OWVI causing death in violation of §625(4);

e) OWI or OWVI causing serious impairment of a body function in violation of §625(5);

f) being under age 21 and driving with any bodily alcohol content in violation of §625(6); or

g) driving with the presence of any amount of a specified controlled substance in the body in violation of §625(8).

*OWI or OWVI causing death or serious injury.

A person may be charged with, convicted of, and punished for a violation of §625(4) or (5)* occurring at the same time the person commits the violation of §625(7). MCL 257.625(7)(d).

## C. Penalties

This subsection discusses the penalties and sanctions imposed for first-time and repeat offenders convicted of violating §625(7). See Section 2.9 of this volume for discussion of general sentencing considerations in all drunk driving cases. See Section 2.10 of this volume on licensing sanctions generally. Section 2.11 of this volume addresses general procedures for forfeiture and vehicle immobilization. Section 1.3 of this volume contains definitions of the following terms:

- Conviction — Section 1.3(B).
- Prior conviction — Section 1.3(G).
- Substantially corresponding ordinance or state statute — Section 1.3(I).

### 1. Criminal Penalties

Section 625(7) imposes two sets of criminal penalties, depending upon the underlying drunk driving offense that gives rise to the charges of child endangerment.

**a. Violation of §625(7)(a) — underlying offense is a violation of §625(1), (3), (4), (5), or (8)**

**First offense.** A first-time offender convicted of §625(7) where the underlying offense is a violation of §625(1), (3), (4), (5), or (8) is guilty of a **misdemeanor** punishable by a mandatory fine of not less than $200.00 or more than $1,000.00 and one or more of the following:

- Imprisonment for not less than five days or more than one year. Not less than 48 hours of the prison term shall be served consecutively, and the prison term shall not be suspended.
- Community service for not less than 30 days or more than 90 days.

MCL 257.625(7)(a)(*i*).

**Second or subsequent offense.** If the violation of §625(7) occurs within seven years of a prior conviction or within ten years of two or more prior convictions and the underlying offense is a violation of §625(1), (3), (4), (5), or (8), the offender is guilty of a **felony** punishable by a mandatory fine of not less than $500.00 or more than $5,000.00 and either of the following:

- Imprisonment under the jurisdiction of the Department of Corrections for not less than one year or more than five years.
- Probation with imprisonment in the county jail for not less than 30 days or more than one year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of the imprisonment shall be served consecutively, and the term of imprisonment shall not be suspended.

MCL 257.625(7)(a)(*ii*).

**b. Violation of §625(7)(b) — underlying offense is a violation of §625(6)**

**First offense.** If the underlying offense is a violation of §625(6), a first-time offender convicted of violating §625(7) is guilty of a **misdemeanor** punishable by one or more of the following:

- community service for not more than 60 days;
- a fine of not more than $500.00;
- imprisonment for not more than 93 days.

MCL 257.625(7)(b)(*i*).

**Second or subsequent offense.** If the violation of §625(7) occurs within seven years of a prior conviction or within ten years of two or more prior convictions and the underlying offense is a violation of §625(6), the offender is guilty of a **misdemeanor** punishable by a mandatory fine of not less than $200.00 or more than $1,000.00 and to one or more of the following:

- Imprisonment for not less than five days or more than one year. Not less than 48 hours of the imprisonment shall be served consecutively, and the term of imprisonment shall not be suspended.
- Community service for not less than 30 days or more than 90 days.

MCL 257.625(7)(b)(*ii*).

## 2. Licensing Sanctions

**No prior convictions** — The Secretary of State shall suspend a person's driver's license for a violation of §625(7) for 180 days if the person has no prior convictions within seven years. The

Secretary of State may issue the person a restricted license after the first 90 days of suspension. MCL 257.319(8)(e).

*See Section 2.10(B) of this volume for a list of prior convictions that result in revocation.

**Repeat offenders** — An offender convicted of violating §625(7) within seven years of another prior conviction listed in the statute is subject to mandatory driver's license revocation for a minimum of one year. MCL 257.303(5)(c). This period increases to five years for offenders convicted of violating §625(7) within ten years of two other prior convictions listed in the statute if the revocation occurs within seven years after the date of any prior revocation or denial. MCL 257.303(5)(g), (7)(a).*

*OWI or OWVI causing death or serious impairment of a body function.

**Points** — The Secretary of State will assess six points for a violation of §625(7) or a law or local ordinance substantially corresponding to it. MCL 257.320a(1)(c). However, if a person is convicted of a violation of §625(4) or (5)* that occurs while the person is violating §625(7), the Secretary of State shall not assess points under §320a for both violations where the charges arise out of the same transaction. MCL 257.625(7)(d).

**Driver Responsibility Fee** — Upon posting of an abstract of a conviction for violation of §625(7), or a law or ordinance substantially corresponding to §625(7), the Secretary of State shall assess a $500.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(b)(*i*). See Section 6.4(B) of this volume for more information about driver responsibility fees.

### 3. Vehicle Sanctions

**First-time offenders** — MCL 257.625(7)(c) provides that sentences for first-time offenders may include vehicle forfeiture under MCL 257.625n or immobilization for up to 180 days under MCL 257.904d(1)(a), in the court's discretion.

**Repeat offenders** — If the violation of §625(7) occurs within seven years of a prior conviction or within ten years of two or more prior convictions, immobilization is mandatory, unless the court has exercised its discretion to order vehicle forfeiture. MCL 257.625(7)(c). The immobilization periods are as follows:

- For a conviction within seven years after a prior conviction, not less than 90 days or more than 180 days. MCL 257.904d(1)(c).
- For a conviction within ten years after two or more prior convictions, not less than one year or more than three years. MCL 257.904d(1)(d).

**Registration Denial** — The Secretary of State shall refuse issuance of a registration or a transfer of registration for a vehicle if the driver's license of the vehicle's owner, co-owner, lessee, or co-lessee is suspended, revoked, or denied for a third or

subsequent violation of §625 or §625m or a local ordinance substantially corresponding to these sections. MCL 257.219(1)(d).

## 3.8 Operating With the Presence of Drugs — §625(8)

### A. Statute

MCL 257.625(8) establishes a "zero tolerance" violation specific to controlled substances for individuals who operate motor vehicles. MCL 257.625(8) states:

> "A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person has in his or her body any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in section 7214(a)(*iv*) of the public health code, 1978 PA 368, MCL 333.7214."

### B. Elements

MCL 257.625(8) prohibits an individual from operating a motor vehicle if the person "has in his or her body any amount of a controlled substance." The elements of this offense are as follows:

**1. Defendant operated a motor vehicle on a Michigan highway or other place open to the general public or generally accessible to motor vehicles, including a designated parking area,***

*See Section 1.3 of this volume for definition of the terms "operating" and "generally accessible to motor vehicles" as used in the statute.

It is not necessary for a defendant to possess a driver's license in order to be convicted of this offense. MCL 257.625(8).

**AND**

**2. At the time the defendant operated the vehicle, "any amount of a controlled substance" was present in the defendant's body.**

Unlike MCL 257.625(6), which precisely defines "any bodily alcohol content," MCL 257.625(8) does not define "any amount of a controlled substance." "Controlled substance" is specifically defined in MCL 257.625(8) as a Schedule 1 controlled substance listed in MCL 333.7212 or a substance described in MCL 333.7214(a)(*iv*). The lists found in §7212 and §7214(a)(*iv*) include numerous opiates and opium derivatives, a variety of compounds or mixtures containing different hallucinogenic substances, synthetic equivalents of the substances extracted from marijuana plants, and coca leaves and their derivatives.*

*This list is not meant to be exhaustive. For a complete list of the included substances, their chemical designations, and their trade names, see MCL 333.7212 and 333.7214(a)(*iv*).

## C. Penalties

The penalties and sanctions for §625(8) offenses are set forth below. See Section 2.9 of this volume for discussion of general sentencing considerations in all drunk driving cases. See Section 2.10 of this volume on licensing sanctions generally. Section 2.11 of this volume addresses general procedures for forfeiture and vehicle immobilization. Section 1.3 of this volume contains definitions of the following terms:

- Conviction — Section 1.3(B).
- Prior conviction — Section 1.3(G).
- Substantially corresponding ordinance or state statute — Section 1.3(I).

### 1. First Offense

**Criminal Penalties** — A first-time violator of §625(8) is guilty of a **misdemeanor** punishable by one or more of the following:

- community service for not more than 360 hours;
- imprisonment for not more than 93 days;
- a fine of not less than $100.00 or more than $500.00.

MCL 257.625(9)(a). The prison term may be suspended. See MCL 257.625(9)(d).

**Licensing Sanctions** — The Secretary of State must suspend a first-time offender's driver's license for 180 days. After the first 30 days of the suspension, the Secretary of State may issue the offender a restricted license for a specified portion of the remaining suspension if the offender is otherwise eligible for a license. MCL 257.319(8)(a), (15).

**Points** — Offenders are assessed six points for violating §625(8) or a substantially corresponding local law or ordinance. MCL 257.320a(1)(c).

**Driver Responsibility Fee** — Upon posting of an abstract of a conviction for violation of §625(8), or a law or ordinance substantially corresponding to §625(8), the Secretary of State shall assess a $500.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(b)(*i*). See Section 6.4(B) of this volume for more information about driver responsibility fees.

**Vehicle Sanctions** — Vehicle immobilization may be ordered for not more than 180 days. MCL 257.904d(1)(a) and MCL 257.625(9)(e).

**Ignition Interlock Device** — The court has discretion to order as a condition of probation that an offender's vehicle be equipped with an ignition interlock device as described in MCL 257.625k and 257.625*l*. MCL 257.625(24).

### 2. Second Offense

**Criminal Penalties** — An offender who violates §625(8) within seven years of one prior conviction is guilty of a **misdemeanor** punishable by a mandatory fine of not less than $200.00 or more than $1,000.00 and one or more of the following:

- not less than five days or more than one year of imprisonment;
- community service for not less than 30 days or more than 90 days.

MCL 257.625(9)(b). Any term of imprisonment shall not be suspended, and no less than 48 hours of the term shall be served at a time. MCL 257.625(9)(b)(*i*), (d).

**Licensing Sanctions** — An offender convicted of violating §625(8) within seven years of a prior conviction is subject to mandatory driver's license revocation for a minimum of one year. MCL 257.303(5)(c), (7). The period of revocation is the longer of the following:

- not less than one year from the date of revocation; or
- not less than five years from the date of revocation if the subsequent revocation occurs within seven years of a previous revocation; and
- "the person rebuts by clear and convincing evidence the presumption resulting from the prima facie evidence that he or she is a habitual offender. The convictions that resulted in the revocation and denial constitute prima facie evidence that he or she is a habitual offender"; and
- the person meets the Secretary of State's requirements.

MCL 257.303(7).

*Forfeiture is permitted by MCL 257.625(9)(f).

**Vehicle Sanctions** — For a conviction under §625(8) within seven years of a prior conviction, the court must order vehicle immobilization for not less than 90 days or more than 180 days, unless forfeiture is ordered under MCL 257.625n.* MCL 257.904d(1)(c) and MCL 257.625(9)(e).

Forfeiture may be ordered in the court's discretion if the offender has an ownership interest in the vehicle used in the offense. The court may order that a leased vehicle be returned to the lessor. MCL 257.625n(1).

**Ignition Interlock Device —** The court has discretion to order as a condition of probation that an offender's vehicle be equipped with an ignition interlock device as described in MCL 257.625k and 257.625*l*. MCL 257.625(24).

### 3. Third or Subsequent Offense

**Criminal Penalties** — An offender who violates §625(8) within ten years of two or more prior convictions is guilty of a **felony** punishable by a mandatory fine of not less than $500.00 or more than $5,000.00 and either of the following:

- imprisonment for not less than one year or more than five years under the jurisdiction of the Department of Corrections; or
- probation with imprisonment in the county jail for not less than 30 days or more than one year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of the imprisonment shall be served consecutively.

MCL 257.625(9)(c). Any term of imprisonment shall not be suspended. MCL 257.625(9)(d).

**Licensing Sanctions** — The Secretary of State must revoke the driver's licenses of repeat offenders who have two prior convictions of any of the offenses listed in the statute within ten years if any of the convictions resulted from an arrest on or after January 1, 1992. MCL 257.303(5)(g). The period of revocation is the longer of the following:

- not less than one year from the date of revocation; or
- not less than five years from the date of revocation if the subsequent revocation occurs within seven years of a previous revocation; and
- "the person rebuts by clear and convincing evidence the presumption resulting from the prima facie evidence that he or she is a habitual offender. The convictions that resulted in the

revocation and denial constitute prima facie evidence that he or she is a habitual offender"; and

- the person meets the Secretary of State's requirements.

MCL 257.303(7).

**Vehicle Sanctions** — For a conviction under §625(8) within ten years of two or more prior convictions, the court must order vehicle immobilization for not less than one year or more than three years, unless forfeiture is ordered under MCL 257.625n. MCL 257.904d(1)(d) and MCL 257.625(9)(e). Forfeiture may be ordered in the court's discretion if the offender has an ownership interest in the vehicle used in the offense. The court may order that a leased vehicle be returned to the lessor. MCL 257.625n(1).

**Registration Denial** — The Secretary of State shall refuse issuance of a registration or a transfer of registration for a vehicle if the driver's license of the vehicle's owner, co-owner, lessee, or co-lessee is suspended, revoked, or denied for a third or subsequent violation of §625 or §625m or a local ordinance substantially corresponding to these sections. MCL 257.219(1)(d).

**Ignition Interlock Device** — The court has discretion to order as a condition of probation that an offender's vehicle be equipped with an ignition interlock device as described in MCL 257.625k and 257.625*l*. MCL 257.625(24).

## D. Issues

**Using an offender's prior convictions to enhance a subsequent charge does not offend the prohibition against ex post facto laws.** In *People v Callon,* 256 Mich App 312, 315 (2003), the Michigan Court of Appeals upheld the use of a "prior conviction" to enhance a conviction of OWI to a felony. The defendant was convicted of OWI as a third offender. The defendant claimed that use of his "prior conviction" operated as an ex post facto law because the prior OWVI occurred before the effective date of the amendment adding OWVI to the list of offenses in the enhancement statute. The Court held that the enhancement statute did not act as an ex post facto law because it did not attach legal consequences to defendant's prior OWVI conviction but rather attached legal consequences to the defendant's future conduct of committing an OWI. *Id*. at 318.

# 3.9 Refusal to Submit to a Preliminary Chemical Breath Analysis — §625a(2)

## A. Statute

MCL 257.625a(2) states:

> "A peace officer who has reasonable cause to believe that a person was operating a vehicle upon a public highway or other place open to the public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state and that the person by the consumption of alcoholic liquor may have affected his or her ability to operate a vehicle, or reasonable cause to believe that a person was operating a commercial motor vehicle within the state while the person's blood, breath, or urine contained any measurable amount of alcohol or while the person had any detectable presence of alcoholic liquor, or reasonable cause to believe that a person who is less than 21 years of age was operating a vehicle upon a public highway or other place open to the public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state while the person had any bodily alcohol content as that term is defined in section 625(6), may require the person to submit to a preliminary chemical breath analysis. The following provisions apply with respect to a preliminary chemical breath analysis administered under this subsection:
>
> * * *
>
> > "(d) Except as provided in subsection (5), a person who refuses to submit to a preliminary chemical breath analysis upon a lawful request by a peace officer is responsible for a civil infraction."

**Note:** For discussion of the circumstances where police may require a preliminary chemical breath analysis, see Section 2.1(B) of this volume. A preliminary chemical breath analysis should be distinguished from a chemical test of a person's blood, urine, or breath pursuant to the implied consent statute, MCL 257.625c. A discussion of the implied consent statute appears at Section 2.3 of this volume.

## B. Elements

**1. The defendant operated a vehicle on a Michigan highway or other place open to the public or generally accessible to motor vehicles, including a designated parking area, and**

For discussion of what constitutes "operating" a vehicle, or an area "generally accessible to motor vehicles," see Section 1.3 of this volume.

**2. Police have reasonable cause to believe that the defendant:**

**a)** by consumption of alcoholic liquor, may have affected his or her ability to operate the vehicle; **or**

**b)** was operating a commercial motor vehicle while his or her blood, breath, or urine contained any measurable amount of alcohol or detectable presence of alcoholic liquor; **or**

**c)** was under age 21 and was operating the vehicle with any bodily alcohol content as defined in Vehicle Code §625(6).

In criminal cases, "reasonable cause" is shown by facts leading a fair-minded person of average intelligence and judgment to believe that an incident has occurred or will occur. See *People v Richardson,* 204 Mich App 71, 79 (1994).

**AND**

**3. An officer requested the defendant to submit to a preliminary chemical breath analysis,**

**AND**

**4. The defendant refused to submit to the preliminary chemical breath analysis.**

## C. Penalties

The statute requires that the driver of a commercial vehicle asked to submit to a preliminary chemical breath analysis be informed of the consequences of refusal. MCL 257.625a(4). After having been so informed, the driver of a commercial motor vehicle who refuses to comply with a peace officer's lawful request to submit to a preliminary chemical breath analysis is guilty of a misdemeanor punishable by imprisonment for not more than 93 days, a fine of not more than $100.00, or both. Additionally, the officer will issue a 24-hour out-of-service order. MCL 257.625a(4)–(5).

In cases involving drivers of vehicles other than commercial motor vehicles, refusal to submit to a preliminary chemical breath analysis is a civil infraction subject to sanctions under MCL 257.907. MCL 257.625a(2)(d).

The Secretary of State will assess two points to a driver under age 21 who refuses to submit to a preliminary breath test. MCL 257.320a(1)(t).